

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN CINDY YOUNKIN**, on March 19, 1999
at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Bill Tash, Chairman (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 666, SB 468, SB 499,
3/16/1999
Executive Action: HB 666, SB 468, SB 499, SB
383, SB 429

HEARING ON HOUSE BILL 666

Sponsor: Rep. Karl Ohs, HD 33, discussed the bill. He said he decided to pull the bill because the issues were very complicated and the time was limited. All interest parties agreed to work on this during the interim.

EXECUTIVE ACTION ON HOUSE BILL 666

Rep. Ohs **MOVED TO TABLE**. The question was called. The motion **PASSED** unanimously. **{Tape : 1; Side : A; Approx. Time Counter : 0 - 2.4}**

HEARING ON SENATE BILL 468

Sponsor: Sen. Vicki Cocchiarella, SD 32, presented the bill. The bill would re-authorize the dams on the Clark Fork River. This bill would temporarily close the basin of the Clark Fork River giving the parties involved enough time to negotiate water rights. She explained the big deal with this issue. If Washington Power called in all its junior water rights, nobody would get any water. The reason for the bill and the slow down in the process is to protect Montanans water rights. She pointed out this closure did not include ground water, domestic use, municipal, livestock or emergency appropriations. Almost anything can continue to happen. However, big projects that require a lot of water will be stopped from happening. **{Tape : 1; Side : A; Approx. Time Counter : 2.4}**

Proponents: Bud Clinch, Director of Department of Natural Resources and Conservation. He explained the bill was the result of an agreement between Montana and Avista Corporation. He presented written testimony. **EXHIBIT(nah62a01) {Tape : 1; Side : A; Approx. Time Counter : 7.4 - 14.1}**

Bob Lane, Chief Legal Counsel for Fish, Wildlife and Parks, presented written testimony from Director Pat Graham in support of the temporary closure. **EXHIBIT(nah62a02) {Tape : 1; Side : A; Approx. Time Counter : 14.5}**

Art Compton, Department of Environmental Quality, spoke in favor of the bill. He said the DEQ's involvement on the Avista re-licensing stems from the fact that Noxon Rapids Dam is covered under the Montana Major Facilities Siting Act. **{Tape : 1; Side : A; Approx. Time Counter : 14.5 - 17.5}**

Tom Ebzery, an attorney from Billings representing Avista Corporation which was formerly Washington Water and Power, spoke in favor of the bill. He pointed out the collaborative process was unique and would probably be a model for future licensing.

{Tape : 1; Side : A; Approx. Time Counter : 17.5 - 19.1}

Mike Murphy, Montana Water Resources Association, spoke in support of the bill. **{Tape : 1; Side : A; Approx. Time Counter : 19.1 - 19.4}**

Jerry Wells, representing Montana Council for Trout Unlimited, spoke in support of SB 458. He said their council was very involved in the re-licensing. He felt the Avista Corporation was a wonderful corporation to work with in their willingness to step forward and deal with fishery issues. They have put money into restoration of fish species. **{Tape : 1; Side : A; Approx. Time Counter : 19.4 - 20.3}**

Holly Franz, representing the Montana Power Company and the Upper Clark Fork River Basin Steering Committee, was in support of the bill. She called this "the new way for re-licensing." **{Tape : 1; Side : A; Approx. Time Counter : 20.3 - 21.2}**

Opponents: None.

Questions from Committee Members and Responses: **{Tape : 1; Side : A; Approx. Time Counter : 21.6 - 28.6}**

Closing by Sponsor: Sen. Cocchiarella closed. **{Tape : 1; Side : A; Approx. Time Counter : 27.6 - 30.5}**

EXECUTIVE ACTION ON SENATE BILL 468

Rep. Bitney **MOVED DO CONCUR.** He distributed the moratorium agreement and a copy of a fax to Tom Matthews, Chief Executive Officer of Avista Corporation from Governor Racicot.

EXHIBIT (nah62a03) EXHIBIT (nah62a04)

The question was called. The motion **PASSED** unanimously. **{Tape : 1; Side : A; Approx. Time Counter : 30.5 - 32.9}**

HEARING ON SENATE BILL 499

Sponsor: Sen. Lorents Grosfield, presented SB 499. He described the need for the bill stemming from a review of the Montana Water Quality laws. The bill addressed concerns that were identified

in a December 24, 1998 letter from the EPA. **{Tape : 1; Side : A; Approx. Time Counter : 32.9 - 41.5}**

Proponents: Mark Simonich, Director of Department of Environmental Quality, distributed a list summarizing items that had been disapproved by EPA. **EXHIBIT(nah62a05)** He presented written testimony. He said the actions with the bill do satisfy EPA issues. He described issues that the state did not agree with. **EXHIBIT(nah62a06) {Tape : 1; Side : A; Approx. Time Counter : 41.7 - 51.2}**

John Blomquist, representing Montana Stockgrowers Association, spoke in favor of the bill. He felt the standards disapproved by EPA under the Montana Water Resource Act were technical and hypercritical. He presented an amendment which addressed how the department would deal with the short term authorization of the 308 permit. **EXHIBIT(nah62a07)** He distributed another amendment. This was necessary because water users and water right holders worked hard on dealing with these non degradation exemptions. It is important that non degradation exemptions continue to recognize the use of water established under a water right or under a permit. **EXHIBIT(nah62a08) {Tape : 1; Side : A; Approx. Time Counter : 51 - 61}**

Don Allen, Western Environmental Trade Association, spoke in support of the bill and the amendment. He described the potential impacts of a lawsuit, referred to by Sen. Grosfield. If Montana were to loose the suit, the impacts would be far reaching and affect a wide range of WETA members. It was important that this not further disrupt the economic activities of the state. The lawsuit was filed in Colorado. It wasn't just the challenge by environmental groups but the request in the lawsuit for a cessation of activities on particular things they might think needed to be stopped. This could impact various endeavors in the economy of the state should this happen here. **{Tape : 1; Side : A; Approx. Time Counter : 61 - 63.8}**

Steve Pilcher, representing the City of Billings, spoke for the bill. He reminded the committee of the ugly debates in the 93 and 95 Session over the Montana Water Quality Act. These changes proposed deal with the non-degradation exemptions. The language will not result in a major change in the way the regulated community will be dealt with. He felt this worked four years ago and shouldn't be changed but would agree with it as long as it allowed to continue to regulate and protect the aquatic life. **{Tape : 1; Side : B; Approx. Time Counter : 0.3 - 2.3}**

Mike Murphy, representing the Montana Water Resources Association, said they wanted to go on record in support of SB

499. He felt these were important issues that needed to be addressed. They were in support of the amendments. **{Tape : 1; Side : B; Approx. Time Counter : 2.3 - 3}**

Cary Heggberg, Montana Wood Products Association, spoke in support of the bill. He pointed out Montana was vulnerable to litigation over water quality laws. The association was assisting the state's interests in litigation in water quality concerns. Litigation will probably continue in trying to shut down good, viable natural resource development activities on the basis of water quality issues. **{Tape : 1; Side : B; Approx. Time Counter : 3 - 4.8}**

Opponents: None.

Questions from Committee Members and Responses:

Rep. McGee asked Sen. Grosfield if this bill had anything to do with past legislation. Sen. Grosfield answered that it does deal with some past legislation but that it does not make up the bulk of the bill. Rep. McGee asked about the lawsuit. Director Simonich replied the suit was filed last year by Earth Justice on behalf of a variety of environmental groups against the Environmental Protection Agency. This forced EPA to review its standards in Montana and then to promulgate federal standards in Montana. Rep. McGee wanted to know what happens if this bill is not passed. Claudia Massman, Attorney for DEQ answered, if it doesn't pass EPA will promulgate Federal rules. **{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 12.6}**

Rep. Ohs asked Simonich to discuss page 3 of the amendments. Amendment #7, was not in the law before and Rep. Ohs wanted to know if it was something he had negotiated. It was answered that amendment #7 was substantively negotiated. **{Tape : 1; Side : B; Approx. Time Counter : 12.6 - 17.3}**

Rep Ewer had a question for Mark Simonich. Rep. Ewer wanted to know if Mark had reviewed the amendments from the Montana Stock Grower's Association. Simonich replied, that he has not seen it. He was made aware of it that afternoon. The intent of the amendment is very clear and he supports that. The amendments were not intended to provide a threat to Montana Water Rights. Rep. Ewer asked about the fear of mixing zones. Simonich is not sure that these changes even addresses mixing zones. **{Tape : 1; Side : B; Approx. Time Counter : 17.3 - 21}**

Rep. Dale asked a question of Simonich. Wanted to know if the process would be more difficult or would the standards be higher.

Simonich did not feel this would raise or lower standards. **{Tape : 1; Side : B; Approx. Time Counter : 21 - 22.7}**

Rep. Harper asked Simonich what level of approval they have from the EPA on the provisions of these bills. If the committee passes these will they go back in front of the EPA. The EPA had sent a letter to Simonich and it basically tells them that the actions by Simonich are acceptable to the EPA. All of the disputed areas are supported by EPA. **{Tape : 1; Side : B; Approx. Time Counter : 22.7 - 25.6}**

Rep. Younkin asked for a copy of the letter that Simonich received from the EPA. Simonich said he would provide it. (See unnumbered exhibit) **{Tape : 1; Side : B; Approx. Time Counter : 25.6 - 25.8}**

Rep. Hurdle asked Simonich a question regarding the short term accedence of standards. Simonich said they are not dealing with the degree of turbidity but categorical exclusions. Abe Harpsted, DEQ, tried to answer the question. **{Tape : 1; Side : B; Approx. Time Counter : 25.8 -32.0}**

Closing by Sponsor: Sen. Grosfield closed. He described a historical perspective. In 1975, SB 310 was the first permanent process for local activities. In the mid 80's they negotiated for 3A short-term exclusion authorization. SB 310 approved 3A authorization and in 1998 it was approved by EPA. On December 24, 1998 the EPA decided they didn't like it, as detailed in their letter. The 3A process has worked very well, and that is why there has been a lot of resistance to the EPA changing the 3A authorization. Sen. Grosfield then gave some background on water rights. Sen. Grosfield then read parts of the December 24, 1998 letter from the EPA. **{Tape : 1; Side : B; Approx. Time Counter :32.4- 43.7}**

EXECUTIVE ACTION ON SENATE BILL 383

Rep. Ohs **MOVED DO CONCUR.** He distributed a memorandum addressed to Senator Hargrove from Mary Vandembosch which provided questions and answers regarding SB 383. **EXHIBIT(nah62a09)** He distributed an amendment, #38305, **EXHIBIT(nah62a10)**, and a memorandum regarding the grey bill, **EXHIBIT(nah62a11)**. Rep. Ohs **MOVED** the amendment. **{Tape : 1; Side : B; Approx. Time Counter : 46.3 - 48.1}**

Mary Vandembosch explained the amendments. A growth policy has to be adopted before the special cluster development regulations

could be developed. The amendment would require the growth policy to evaluate the effect of the subdivision in growth areas on the public interest criteria. **{Tape : 1; Side : B; Approx. Time Counter : 48.5 - 50.7}**

The question was called on the amendment. The motion **PASSED** 16-4 with Reps. Gutsche, Hurdle, Tuss and Erickson voting no.

Rep. Ohs requested that Mona Jamison explain amendments 38307. **EXHIBIT(nah62a12) {Tape : 1; Side : B; Approx. Time Counter : 50.7 - 56.4}**

Mona Jamison said the purpose of these amendments was to make certain that if you do not do a cluster development in a growth area and you choose not to do the higher density, but do a regular subdivision you cannot be disapproved because you didn't want to do cluster development. **{Tape : 1; Side : B; Approx. Time Counter : 56.4 - 57.4}**

Mary Vandebosch explained the amendments. She pointed out that in order to do these special cluster development regulations, referring to line 7, line one, they must have adopted a growth policy. This is in the bill in its current form. **{Tape : 1; Side : B; Approx. Time Counter : 57.4 - 61.8}**

Rep. McGee **MOVED** the 38307 amendments. The question was called. The motion **PASSED** 16-4 with Reps. Gutsche, Hurdle, Tuss and Erickson voting no.

Rep. said there was one more set of amendments. He **MOVED** amendments 38308. **EXHIBIT(nah62a13)** He explained these amendments were in response to some of the questions that came out of committee. He asked Mona Jamison to explain them. Jamison said if incentives are to be provided for clustering and preserving open space and agricultural land, there would still be a master plan requirement. The protest provision was addressed by taking language from the zoning law that says that 40% of the people within the area protest, they have a right to ask for a hearing before the County Commissioners on those specific areas. **{Tape : 2; Side : A; Approx. Time Counter : 0.3 - 7.2}**

Rep. Erickson pointed out that 40% of the real property covered by the Master Plan was a high standard. Mona Jamison said this was current law and the intent was to provide a similar structure rather than create a new one. The county protest in existing law is 40%. For municipalities and other local governing bodies, it is 20%. Rep. Erickson noted these numbers were used in zoning rather than Master Plans. Jamison pointed out there was flexibility on that number. However, this was a pre-existing,

statutory guide. The percentage could be lowered. The important issue was the protest availability. Rep. Younkin pointed out this was zoning language. Master Plans normally have no protest provisions. If someone doesn't like it they have to go through the petition process to get it on the ballot to get rid of it.

{Tape : 2; Side : A; Approx. Time Counter : 7.2 - 10}

Rep. Erickson asked who was counted in the 40%. Rep. Younkin replied it was 40% of the owners of the real property within the area to be zoned. Rep. Erickson pointed out that Master Plans covered very wide areas so it would take a very large number of people who would have to protest versus a zone. **{Tape : 2; Side : A; Approx. Time Counter : 10 - 10.9}**

Rep. Story said he was concerned about this, also. It was his understanding that a Master Plan covered the whole county. You would need 40% of the people in the county and a cluster development would be dealing with a fairly small area of property. You would be more affected by the school district you were in or maybe that property and the adjoining neighbors. He suggested amending the area affected rather than the 40%. **{Tape : 2; Side : A; Approx. Time Counter : 10.9 - 12.2}**

Rep. Wagner **MOVED TO TABLE**. He felt the bill needed more work. The motion **PASSED** 15-5 with Reps. Story, Ohs, Younkin, Stovall and Dale voting no.

EXECUTIVE ACTION ON SENATE BILL 429

Rep. Dale **MOVED TO RECONSIDER SB 429**, to move it off the table. The question was called. The motion **PASSED** with one no vote by Rep. McGee. **{Tape : 2; Side : A; Approx. Time Counter : 14}**

Rep. Dale **MOVED DO CONCUR** on SB 429. He explained this could be a matter of safety. This applies to a division of land that is already leased or rented for the purpose of aeronautics.

Rep. McGee pointed out pre-planning was needed but there was nothing preventing the county from zoning what they wanted to zone. They could plan ahead but they didn't. He said he understood the reasons behind the bill but the county creates the subdivision regulations and they apply to individuals but not to themselves. **{Tape : 2; Side : A; Approx. Time Counter : 14 - 21.2}**

Rep. Harper asked if subdivision laws were proper for the organizational layout of an airport. McGee replied the subdivision laws were not adequate but Master Plans and zoning

applied. *{Tape : 2; Side : A; Approx. Time Counter : 21.2 - 22.2}*

The question was called. The motion **PASSED** 14-6 on a roll call vote.

ADJOURNMENT

Adjournment: 5:34 P.M.

REP. CINDY YOUNKIN, Vice Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah62aad)